

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS MARK ROGOZINSKI		DEFENDANTS NCO FINANCIAL SYSTEMS, INC.	
(b) County of Residence of First Listed Plaintiff _____ (c) Attorney's (Firm Name, Address, Telephone Number and Email Address) Craig Thor Kimmel, Esquire Kimmel & Silverman, P.C. 30 E. Butler Pike Ambler, PA 19002 (215) 540-8888		County of Residence of First Listed Defendant _____ NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)	
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)	
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 5	PTF DEF PTF DEF
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 6	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 Foreign Nation <input type="checkbox"/> 6 <input checked="" type="checkbox"/> 7
IV. NATURE OF SUIT (Place an "X" in One Box Only)			
CONTRACT		TORTS	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		PERSONAL INJURY	
<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury		PERSONAL INJURY	
<input type="checkbox"/> 410 Voting <input type="checkbox"/> 420 Employment <input type="checkbox"/> 433 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 449 Other Civil Rights		PERSONAL PROPERTY	
REAL PROPERTY		CIVIL RIGHTS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		PRISONER PETITIONS	
<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 520 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		FORFEITURE/PENALTY	
BANKRUPTCY		PROPERTY RIGHTS	
<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other		<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	
OTHER STATUTES		SOCIAL SECURITY	
<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
FEDERAL TAX SUITS		IMMIGRATION	
<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	
V. ORIGIN (Place an "X" in One Box Only)		JUDGMENT	
<input checked="" type="checkbox"/> 1 Original Proceeding		<input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	
VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C SECTION 1692	
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	
VIII. RELATED CASE(S) (See instructions):		JUDGE _____ DOCKET NUMBER _____	
Explanation: <i>4/15/11</i>			
DATE		SIGNATURE OF ATTORNEY OF RECORD	

Explanation:

415/11

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 724 Kiski Park Drive, Apollo, PA 15613

Address of Defendant: 507 Prudential Road, Horsham, PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations

7. Civil Rights

8. Habeas Corpus

9. Securities Act(s) Cases

10. Social Security Review Cases

11. All other Federal Question Cases 15 U.S.C. 1692
 (Please specify)

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify)
- 7. Products Liability
- 8. Products Liability — Asbestos
- 9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

, counsel of record do hereby certify.

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 4/15/11

Craig Thor Kimmel

Attorney-at-Law

57107

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/15/11

Craig Thor Kimmel

Attorney-at-Law

57100

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Mark Rogozinski

CIVIL ACTION

v.

NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

4/15/11
Date

Craig Thor Kimmel
Attorney-at-law

Mark Rogozinski
Attorney for

215-540-8888

877-788-2864

Kimmel@creditlaw.com

Telephone

FAX Number

E-Mail Address

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

MARK ROGOZINSKI,)
Plaintiff)
v.)
NCO FINANCIAL SYSTEMS, INC.,) Case No.:
Defendant)
) COMPLAINT AND DEMAND FOR
) JURY TRIAL
) (Unlawful Debt Collection Practices)

COMPLAINT

MARK ROGOZINSKI ("Plaintiff"), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Apollo, Pennsylvania 15613.

7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters at 507 Prudential Road in Horsham, Pennsylvania, 19044.

located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties.

See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any

1 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
2 collector may not use any false, deceptive, or misleading representation or means in connection
3 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
4 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
5 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
6 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
7 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
8 connection with the collection of a debt.

9
10 13. In enacting the FDCPA, the United States Congress found that “[t]here is
11 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
12 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
13 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
14 additionally found existing laws and procedures for redressing debt collection injuries to be
15 inadequate to protect consumers. 15 U.S.C. § 1692b.

16 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
17 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
18 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
19 collection practices are not competitively disadvantaged, and to promote consistent State action
20 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

21
22 **FACTUAL ALLEGATIONS**

23 15. At all relevant times, Defendant was attempting to collect an alleged consumer
24 debt from Plaintiff.

25 16. The alleged debt at issue arose out of transactions, which were primarily for

1 personal, family, or household purposes.

2 17. On June 7, 2010, Defendant contacted Plaintiff twice on his home telephone,
3 leaving a message on his answering machine stating, in part: "This is an important message
4 from NCO Financial Systems, a debt collection company. This is an attempt to collect a debt
5 and any information will be used for that purpose. Please return the call to Oliver Lingam at
6 866-372-8497."

7 18. Plaintiff received the two (2) telephone calls from the following phone number:
8 (866) 372-8497, which the undersigned confirmed belongs to Defendant. See Exhibit A, photo
9 of Plaintiff's caller ID.

10 19. Plaintiff was confused as to why he was receiving collection calls from
11 Defendant.

13 20. Plaintiff contacted Defendant to inquire why it had called his home telephone
14 number twice, who was Defendant, and why was Defendant calling him.

15 21. Defendant denied to Plaintiff that it had called his home telephone number,
16 stating, "No, we did not call you."

17 22. Plaintiff explained to Defendant that he had Defendant's number on his caller id
18 and that Defendant had left him a message.

19 23. Defendant insisted that there "must be a mistake."

20 24. Plaintiff played for Defendant the message left on his answering machine.

22 25. After hearing the message, Defendant acknowledged that it had made the calls;
23 however, Defendant would not tell Plaintiff why it was calling him.

24 26. Plaintiff asked to speak with "Oliver Lingam," the person identified in the
25 message on his answering machine.

27. After being placed on hold for more than one (1) minute, an individual answered the phone and identified himself as "Oliver Lingam," a manager at Defendant.

28. Mr. Lingam revealed that Defendant was attempting to collect a debt for a Discover card, last four digits 9240, in the amount of \$2,514.37.

29. Plaintiff did not recognize the account as a recent account, but rather an account that could be almost twenty (20) years old.

30. Mr. Lingam acknowledged to Plaintiff that this was an old debt, stating, "It's an old account Mark. This happened way back in 1997."

31. Plaintiff disputed owing the debt, telling Defendant that this account was past the statute of limitations and that it may have been settled in divorce court proceedings. Plaintiff instructed Defendant not to contact him again about this debt.

32. Within five (5) days of its initial communication with Plaintiff, Defendant failed to send Plaintiff written notification information him of his rights to dispute the debt and/or request verification of the debt.

33. To date, Plaintiff has still has not received any written notification from Defendant regarding his rights to dispute the debt and/or request verification of the debt.

34. Defendant's actions in attempting to collect the alleged debt were harassing, abusive and highly deceptive.

CONSTRUCTION OF APPLICABLE LAW

35. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233

1 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
 2 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

3 36. The FDCPA is a remedial statute, and therefore must be construed liberally in
 4 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
 5 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
 6 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
 7 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
 8 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
 9 2002).

10 37. The FDCPA is to be interpreted in accordance with the "least sophisticated"
 11 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
 12 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
 13 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for
 14 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
 15 and the fact that a false statement may be obviously false to those who are trained and
 16 experienced does not change its character, nor take away its power to deceive others less
 17 experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it
 18 ensures protection of all consumers, even naive and trusting, against deceptive collection
 19 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
 20 collection notices. Clomon, 988 F. 2d at 1318.

1
2 **COUNT I**
3 **DEFENDANT VIOLATED THE**
4 **FAIR DEBT COLLECTION PRACTICES ACT**

5 38. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
6 more of the following ways:

- 7 a. Defendant violated of the FDCPA generally;
- 8 b. Defendant violated §1692d of the FDCPA by harassing Plaintiff in
9 connection with the collection of an alleged debt;
- 10 c. Defendant violated §1692e of the FDCPA by using false, deceptive, or
11 misleading representations or means in connection with the collection of a
12 debt;
- 13 d. Defendant violated §1692e(10) of the FDCPA by using false representations
14 or deceptive means to collect or attempt to collect a debt;
- 15 e. Defendant violated §1692f of the FDCPA by using unfair and unconscionable
16 means with Plaintiff to collect or attempt to collect a debt;
- 17 f. Defendant violated §1692g of the FDCPA by failing to send written
18 notification, within five (5) days after its initial communication with Plaintiff,
19 advising Plaintiff of her rights to dispute the debt or request verification of the
20 debt; and
- 21 g. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
22 and failed to comply with the FDCPA.

1 WHEREFORE, Plaintiff, MARK ROGOZINSKI, respectfully prays for a judgment as
2 follows:

- 3 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
4 1692k(a)(1);
5 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
6 15 U.S.C. § 1692k(a)(2)(A);
7 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
8 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
9 d. Any other relief deemed appropriate by this Honorable Court.

10

11 **DEMAND FOR JURY TRIAL**

12 PLEASE TAKE NOTICE that Plaintiff, MARK ROGOZINSKI, demands a jury trial in
13 this case.

14

15 DATED: 4/15/11

16 RESPECTFULLY SUBMITTED,

17 KIMMEL & SILVERMAN, P.C.

18 By: _____

19 Craig Thor Kimmel
20 Attorney ID # 57100
21 Kimmel & Silverman, P.C.
22 30 E. Butler Pike
23 Ambler, PA 19002
Phone: (215) 540-8888
Fax: (877) 788-2864
Email: kimmel@creditlaw.com

Digital
06/18/2010

PLAINTIFF'S
EXHIBIT
A
ALL-STATE LEGAL®